IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 990 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TAJ GLASS WORKS

Versus

UNION OF INDIA THROUGH COLLECTOR

Appearance:

MR GIRISH D BHATT for Appellant

None present for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 29/01/2003

ORAL JUDGEMENT

1. This First Appeal is directed against the judgment and decree dated 30th August, 1980 passed by the learned Civil Judge (S.D.), Ahmedabad (Rural) in Regular

Civil Suit No.84 of 1978 whereby the learned Judge dismissed the said suit filed by the appellant.

2. The appellant was a partnership firm. It was manufacturing glass and glassworks and held a licence issued by the Assistant Collector, Central Excise. According to the appellant, they had surrendered the licence and had stopped manufacturing glass and glassworks. On 20th June, 1969, the Officer of the Preventive Branch of the Deputy Collector, Ahmedabad visited the factory and seized articles worth Rs.2,054.17 Ps. and also documents, registers and records. A show-cause notice was issued and after giving them an opportunity of hearing, the Deputy Collector passed the order on 28th October, 1970. The plaintiff preferred an appeal and the penalty was reduced to Rs.250/- and redemption fine to Rs.250/- but the order regarding Central Excise duty amounting to Rs.24,948.13 Ps. was maintained. The revision and review against the said order was also rejected. The plaintiff, therefore, filed a suit to set aside the appellate order on the grounds which are re-agitated before the appellate authority.

3. The defendant was Union of India. It filed written statement resisting the suit on various grounds. The learned Judge raised necessary issues arising from the pleadings of the parties and at the end of the Trial, came to the conclusion that:

(1) the court had no jurisdiction to hear and decide the suit,
(2) that the suit was hit by Section 35(2) of the Central Excise and Salt Act, 1944,
(3) that the suit was bad for want of notice under Section 80 of the Code of Civil Procedure and
(4) that the plaintiff had failed to prove that the orders under challenge were illegal and contrary to the principles of natural justice.

The learned Judge also held that the suit was filed beyond the period of limitation. In view of these findings, the learned Judge dismissed the suit.

4. The appellant has, therefore, filed the appeal challenging the said judgment and decree.

5. The learned counsel for the appellant took me through the judgment and the relevant provisions of the Central Excise and Salt Act, 1944. However, the findings

recorded by the learned Trial Judge could not be assailed. I, therefore, see no reason to interfere with the judgment under appeal. There is no substance in the appeal and the same is dismissed. No order as to costs.

(M.C. Patel, J.)

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